IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

THURSDAY, THE 26TH JULY 2007 / 4TH SRAVANA 1929

OP.No. 18122 of 1997(S)

R.A.354(COCH)/1995 IN ITA 515(COCH)/1995 OF INCOME TAX APPELLATE TRIBUNAL, COCHIN BENCH, COHIN.

PETITIONER:

THE COMMISSIONER OF INCOME TAX, TRIVANDRUM.

BY STANDING COUNSEL, GOVERNMENT OF INDIA (TAXES)
SRI.P.K.RAVINDRANATHA MENON (SR.)
SRI GEORGE K. JOHN

RESPONDENT:

M/S. ACCELERATED FREEZE DRYING CO.LTD.,
EZHUPUNNA.

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 26/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

H.L. DATTU, C.J. & K.T. SANKARAN, J.

O.P.No.11822 of 1997-S

Dated, this the 26th day of July, 2007

JUDGMENT

H.L. DATTU, CJ.

This is a petition filed by the Revenue under section 256(2) of the Income Tax Act, 1961, hereinafter for the sake of brevity referred to as the Act.

2. The assessee was before the Income Tax Appellate Tribunal, Cochin Bench in I.T.A. No.515/1995 for the assessment year 1991-92. The Tribunal has allowed the assessee's appeal and thereby has set aside the orders passed by the Commissioner of Income-tax (Appeals), Cochin, dated 5.4.1995.

3. The Revenue had filed an application under section 256(1) of the Income Tax Act inter alia requesting the Tribunal to state the case and refer the questions of law for consideration and decision of this court. The Tribunal has rejected the said application/petition. That is how the Revenue is before us in this petition filed under section 256(2) of the Act.

4. The Revenue has raised the following questions of law. They are as under:

> "1. Whether, on the facts and in the circumstances of the case, the Tribunal is right in law in holding that the intimation dated 5.3.1992 got merged in the regular assessment order under section 143(3) dated 30.11.1992 and what the officer has done in the

proceedings under Sec.154 dated 2.5.1994 is to rectify a non-existing order and are not findings of the Tribunal wrong and against law?

2. Whether, on the facts and in the circumstances of the case, will the doctrine of merger apply to the case?"

5. After going through the orders passed by the Tribunal and after perusing the questions of law framed by the Revenue, we are of the opinion that the questions of law raised by the Revenue requires consideration and decision by this court. Therefore we pass the following:

Order

i) The petition is allowed.

ii) A direction is issued to the Income Tax Appellate Tribunal, Cochin Bench to state the case and refer the questions of law arising out of the order passed in ITA No.515/1993 for the assessment year 1991-92 as expeditiously as possible.

Ordered accordingly.

H.L. DATTU,
CHIEF JUSTICE.

K.T. SANKARAN,
JUDGE.

mt/

H.L.DATTU, C.J. &
K.T.SANKARAN, J.

O.P. 18122 OF 1997-S

JUDGMENT

26.7.2007